

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SPENCER SAVINGS BANK, S.L.A.,	.	
	.	
Plaintiff,	.	
	.	Case No. 14-cv-04633
vs.	.	
	.	Newark, New Jersey
BANK OF AMERICA CORPORATION,	.	February 3, 2017
et al.,	.	
	.	
Defendants.	.	

TRANSCRIPT OF RECORDED OPINION
BY THE HONORABLE CATHY L. WALDOR
UNITED STATES MAGISTRATE JUDGE

This oral opinion has been reviewed and revised in accordance
with L. Civ. R. 52.1

APPEARANCES:

For the Plaintiff: No one was present

For the Defendants: No one was present

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1 (Commencement of proceedings)

2

3 THE COURT: It is 2:44, February 3, 2017. This
4 opinion concerns a motion to amend by plaintiff Spencer
5 Savings Bank against Bank of America, Docket Number 14-4633.
6 The motion to amend is to add a fifth count, a claim for
7 fraudulent misrepresentation and concealment regarding the
8 supervision and management of service -- loan servicing.

9 Rule 16 of the Federal Rules of Civil Procedure
10 authorizes the Court to enter schedules of proceedings.
11 Rule 16's purpose is to empower the Court to expedite the
12 disposition of the action; to establish early and continuing
13 control so the case will not be protracted due to lack of
14 management; to discourage wasteful pretrial activities; to
15 improve the quality of the trial through more preparation;
16 and to facilitate settlement.

17 Fed. R. Civ. P. 16(a), the pretrial scheduling
18 order permits a court to take judicial control over a case
19 and to schedule dates for completion by the parties of
20 principal pretrial steps. That is Harrison Beverage v.
21 Dribeck Imports, 133 F.R.D. 463 at 469 (D.N.J. 1990) (quoting
22 the Federal Rules of Civil Procedure, 16 Advisory Committee
23 Note from the 1983 Amendment). See also Newton v. A.C. & S.
24 Inc., 918 F.2d 1121 at 1126 (3d Cir. 1990) (stating that the
25 purpose of Rule 16 is to provide for judicial control over

1 cases, streamline the proceedings, maximize the efficiency of
2 the court system, and actively manage time table of case
3 preparation to expedite speedy and efficient disposition of
4 cases. Importantly, the scheduling orders must, among other
5 things, limit the time to join other parties, amend
6 pleadings, complete discovery and file motions. That is
7 Fed. R. Civ. P. 16(b)(3)(A) requiring the Court to include a
8 deadline for amending pleadings, and the pretrial scheduling
9 order "assures that at some point, the pleadings will be
10 fixed." Fed. R. Civ. P. 16(b) Advisory Committee Note
11 (1983)). See also Harrison, 133 F.R.D. at 469. ("The
12 careful scheme of reasonable framing and enforcement of
13 scheduling orders for case management would thus be nullified
14 if a party could inject amended pleadings upon a showing of
15 less than good cause after the scheduling deadlines have
16 expired.")

17 Whether good cause exists under Rule 16 "depends on
18 the diligence of the moving party." Globespanvirata Inc. v.
19 Texas Instruments, Inc., Civil No. 03-2854, 2005 WL 1638136
20 *3 (D.N.J. July 12, 2005) (quoting Rent-a-Center, Inc. v. 47
21 Mamaroneck Ave. Corp., 215 F.R.D. 100, 104 (S.D.N.Y. 2003)).

22 "Good cause may be satisfied if the movant shows
23 that the delay in filing the motion to amend stemmed from any
24 mistake, excusable neglect, or any other factor which might
25 understandably account for the failure of counsel to

1 undertake to comply with the scheduling order." Phillips v.
2 Greben, Civil No. 04-5590, 2006 WL 3069475 *6 (D.N.J.
3 October 27, 2006) (citing Newton v. Dana Corp. Parish Div.,
4 Civil No. 94-4958, 1995 WL 368172 *1 (E.D. Pa. 1995) ("The
5 absence of prejudice to the nonmoving party does not
6 constitute good cause." Harbor Laundry Sales Inc. v.
7 Mayflower Textile Service, Civil No. 09-6259, 2011 WL 6303258
8 *3 (D.N.J. December 16, 2011) (citing Globespanvirata, 2005
9 WL 1638136 *3)).

10 Put succinctly, "absent diligence, there is no good
11 cause." Chancellor v. Pottsgrove School District, 501
12 F. Supp. 2d 695 at 702 (E.D. Pa. 2007). See also
13 Fed. R. Civ. P. 16(b) Advisory Committee Note, 1983 Amendment
14 ("The Court may modify the schedule on a showing of good
15 cause if it cannot reasonably be met, despite the diligence
16 of the party seeking the extension. In determining whether
17 good cause exists for an untimely motion to amend pleadings,
18 courts typically examine whether the movant possessed or
19 through the exercise of reasonable diligence should have
20 possessed the knowledge necessary to file the amended motion
21 before the deadline had expired.") See Stallings ex rel.
22 Estate of Stallings v. IBM, CIV No. 08-3121, 2009 WL 2905471
23 *2 (D.N.J. September 8, 2009) (denying a plaintiff's motion
24 to amend because they had "sufficient information to state
25 the proposed claims well in advance of the scheduling order

1 deadline"). See also Kennedy v. City of Newark,
2 CIV No. 10-1405, 2011 WL 2669601 *2 (D.N.J. July 7, 2011)
3 ("The most common basis for finding a lack of good cause is
4 the party's knowledge of the potential claim before the
5 deadline to amend has passed").

6 If a movant did have the knowledge necessary to
7 file a motion prior to the expiration of the Court's deadline
8 and if the movant can provide no satisfactory explanation for
9 the delay, the Court has the discretion to deny the motion.
10 See Dimensional Commercial Inc. v. Oz Optics Ltd. at 148
11 F.App'x 82 at 85 (3d Cir. 2005) (upholding the trial court's
12 finding that the movant could not satisfy "good cause because
13 it was in possession of facts underlying its proposed
14 counterclaim well before the amendment deadline.") See also
15 Harrison, 133 F.R.D. at 469 (movant failed to satisfactorily
16 explain delay in filing the motion to amend).

17 In this case, in February of 2009, the pretrial
18 scheduling order was entered. The "add and amend" date was
19 May 8, 2015. That is Docket Entry Number 28.

20 In November 24, 2015, Docket Entry Number 55, there
21 was a consent order for scheduling submitted. It was entered
22 on the docket 11/30/15. The extension on fact end and expert
23 reports were part of that consent order. There was no other
24 date for add parties or amend pleadings.

25 The final sentence of that consent order was: "All

1 other provisions of the Court's February 9, 2015, pretrial
2 scheduling order shall remain in full force and effect unless
3 otherwise amended by the Court."

4 So the "add and amend" date in this case has long
5 passed. It remains May 8, 2015.

6 On June 14, 2016, on a telephone conference,
7 although inadvertently omitted from the docket, there was
8 again a request for extensions of dates. Fact end was
9 extended to August 31.

10 On August 25, 2016, Docket Entry Number 70 and 71,
11 a request to extend deadlines for 90 days was filed. The
12 Court granted a 60-day extension on the papers with no
13 request to extend the "add parties, amend pleadings" date.

14 On September 29, 2016, Docket 74 and 80, and again
15 on October 1, 2016, pursuant to a request by the parties,
16 fact end was extended to December 2, 2016, and a briefing
17 schedule was set for this motion.

18 The date for add parties and amend pleadings has
19 long passed. The plaintiff has not shown good cause pursuant
20 to Rule 16(b). The motion to amend will be denied as
21 untimely.

22 (Conclusion of proceedings)
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Certification

I, SARA L. KERN, Transcriptionist, do hereby certify that the 7 pages contained herein constitute a full, true, and accurate transcript from the official electronic recording of the proceedings had in the above-entitled matter; that research was performed on the spelling of proper names and utilizing the information provided, but that in many cases the spellings were educated guesses; that the transcript was prepared by me or under my direction and was done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

s/ ***Sara L. Kern***

8th of February, 2017

Signature of Approved Transcriber

Date

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